

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
RONALD JOHNSON and SETH
GOLDSTEIN, individually, and on behalf of
all others similarly situated,

Plaintiffs,

-against-

EQUINOX HOLDINGS, INC., and DOES 1
through 100, inclusive,

Defendants.
-----X

Civ. No.: 13 CV 6313 (RMB)(JLC)

AFFIDAVIT OF KEVIN S. MORRIS,
ESQ. IN SUPPORT OF DEFENDANTS'
MOTION TO DISMISS PLAINTIFF'S
COMPLAINT PURSUANT TO FED R.
CIV. P. 12(b)(6)

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

KEVIN S. MORRIS, ESQ., being duly sworn, deposes and says:

1. I am the Vice President and General Counsel for Defendant Equinox Holdings, Inc. (hereinafter "Defendant" or "Equinox"). Based on my review of Equinox's business records and my personal knowledge, I am familiar with the facts set forth herein.

2. A true and correct copy of the following documents are attached hereto as Exhibit "A:" (a) April 30, 2012 Employment Agreement between Equinox and Plaintiff Ronald Johnson; and (b) Incorporated document to Plaintiff Johnson's Employment Agreement entitled "Job Description."


3. A true and correct copy of the following documents are attached hereto as Exhibit "B:" (a) February 9, 2005 Employment Agreement between Equinox and Plaintiff Seth Goldstein; (b) April 3, 2006 Employment Agreement between Equinox and Plaintiff Goldstein;

and (c) Incorporated document to Plaintiff Johnson's Employment Agreements entitled "Job Description."



KEVIN S. MORRIS

Sworn to and subscribed before me
this 12th day of Nov. 2013.



Notary Public

JUSTINE MCGUIRE
Notary Public, State of New York
Qualified in New York County
No. 01MC6267806
My Commission Expires Aug. 27, 2016

Exhibit A



EMPLOYMENT AGREEMENT

(Personal Trainer/Pilates Instructor)

This Employment Agreement (the "Agreement") is made as of the 20th day of April, 2012 by and between Equinox Fitness Club, a Delaware Corporation (the "Company"), and Ronald Johnson (the "Employee").

WHEREAS, the Employee is/has been employed by the Company as a Fitness Instructor; and

WHEREAS, the Company operates health and fitness clubs known as the Equinox Fitness clubs (hereinafter "Equinox"), and is obtaining the services of the Employee as a fitness Instructor at one or more of the Equinox clubs upon the terms and conditions set forth in this Agreement;

NOW, THEREFORE, in consideration for the Company's agreement to employ or continue to Employee, and payment of other good and valuable consideration, IT IS MUTUALLY AGREED AS FOLLOWS:

1. Employment at Will; Duties; Probation Period

(a) The Company agrees to employ Employee as an employee at will. This means that either you or the Company may terminate the employment relationship at any time for any reason, with or without cause or notice. The purpose of this Agreement is to set forth certain duties and understandings applicable while the Agreement shall remain in effect. This Agreement shall not be construed to create any relationship other than an employment relationship or to guarantee employment for any particular term or duration at-will.

(b) The Employee agrees to serve as a personal trainer and/or as an instructor of Pilates using Pilates a Reformer machines or similar equipment designed for Pilates instruction (each referred to herein as a "Fitness Instructor."). The Employee agrees to use his/her best efforts to perform in diligent fashion the duties and responsibilities of a Fitness Instructor, as set forth in the Equinox Job Description for Employee's position.

(c) For new hires, there shall be a probation period of 90 days commencing from the date Employee executes Agreement, during which the Employer shall evaluate the Employee's performance, subject to the at-will policy above. This is a time for Employee and the Company to get acquainted. Both the Employee and the Company remain free to terminate the employment relationship for any lawful reason during the probation period.

2. Attention to Business: Duties

(a) While an Equinox employee agrees to devote such amounts of his time, skill, and efforts to the performance of his/her duties and responsibilities to the Company, and to any related entity of the Company, as may reasonably be necessary, under the supervision and direction of the Company.

(b) The Employee shall be available for reasonable travel on Company business. The Employee shall attend media events, promotions and other similar events and shall participate in advertising and promotional programs on an as requested basis and in the manner specified by the Company.

3. Competition with the Company

(a) *Diversion of Business Opportunities While an Equinox Employee.* Employee agrees that, during the term of his/her Equinox employment, he/she shall not divert any Equinox business opportunity to him or her self or to any competing entity, and thus, agrees that s/he shall not provide personal training services or provide fitness instruction of any sort to any person who is (or within the preceding six months, was) an Equinox member, at any facility other than an Equinox club (including private residences and/or other spas, wellness centers, health and/or fitness facilities, yoga or pilates studio (each of which shall collectively be referred to herein as a "Health and Wellness Facility"), unless and until prior approval is obtained in writing from the General Manager at the Employee's "home" club, and payment of the applicable fee (as determined by the Company) is first made to the Company.

(b) *Competing with Equinox While an Equinox Employee.* The Employee further agrees that, during the term of his/her Equinox employment, he/she shall not become affiliated with or employed by, either directly or indirectly, as an employee, advisor, consultant or independent contractor, any Health and Wellness Facility located within a ten (10) mile radius of any Equinox Club where Employee has performed services during the preceding six (6) months. Except insofar as it would prevent or hinder the Employee from performing his/her duties under this Agreement, the Employee shall not be prevented from becoming affiliated with or employed by any Health and Wellness Facility that is located outside a ten (10) mile radius from any Equinox club where Employee is then employed or performs services, and provided approval is first obtained in writing from his or her General Manager, which shall not unreasonably be withheld.

(d) *Right to Publicity.* While an Equinox employee, Employee agrees that he/she shall not publicize (or permit anyone else to publicize) Employee's affiliation with any Health and Wellness Facility located within a ten (10) mile block radius of any Equinox Club, where Employee has performed services during the preceding six (6) months.

(e) *Distribution of Competing Promotional Materials.* While an Equinox employee, Employee agrees not to distribute to any Equinox member any personal business cards or advertising, or any advertising or promotional material, for any entity other than Equinox.

(f) *Non-Disparagement and Non-Solicitation.* While an Equinox employee, Employee agrees not to encourage, induce or attempt to induce any person who is then an employee, consultant or member of Equinox to terminate his or her employment, consultant relationship or membership with Equinox. Further, Employee agrees that he/she will not disparage Equinox, its employees or business operations.

Subject to the restrictions contained in Sections 4 (a)-(f), and, insofar as such employment does not interfere with Employee's duties and responsibilities as an Equinox employee or otherwise present a conflict of interest, Employee shall be permitted to engage in outside employment.

Any breach of this provision shall be grounds for immediate termination without notice. The Employee hereby agrees that any breach or threatened breach of any provision of this Section 4 shall result in irreparable harm to the Company for

which the Company will have no adequate remedy at law, and shall entitle the Company to, in addition to any other available remedies, injunctive relief.

4. Disclosure of Confidential Business Information

(a) Employee agrees that, except as may be required by law or legal process, he/she will not disclose to any person or entity any of Equinox's confidential information, including, but not limited to, information relating to Equinox's members, prospects, employees, independent contractors and suppliers, as well as business plans, policies, operating procedures, financial information, inventions, processes and trade secrets of Equinox.

(b) Employee agrees that, upon leaving the Company's employ, he/she will not take with him or her, or disclose, except as may be required by law, without the prior written consent of an officer authorized to act in the matter by the Company, any confidential information of the Company. All equipment, records, files, memoranda, computer printouts and data, reports, correspondence and the like, relating to the business of Equinox, shall remain the sole property of Equinox. Any such material at the time of separation from employment must be relinquished at the time of separation.

The Employee hereby agrees that any breach or threatened breach of any provision of this Section 5 shall result in irreparable harm to the Company for which the Company will have no adequate remedy at law, and shall entitle the Company to, in addition to any other available remedies, injunctive relief. The provisions of this Section 5 shall survive any termination of this Agreement.

5. Payment For Services By Members

Employee is required to charge every client that is trained at Equinox through the Equinox fitness program in accordance with the rates then in effect at the particular club where the training is performed. The Employee may not offer unauthorized discounts, free sessions, or otherwise vary the terms or method of payment from that approved by the Company without the prior written consent of the General Manager. All payment for services will be made as follows:

- (a) Payment for fitness services to be rendered at any Equinox club shall be made directly to Equinox and not to the Employee;
- (b) Employees are prohibited from receiving any direct payments for services from Equinox members;
- (c) Barter arrangements with Equinox members are prohibited;
- (d) Exchange of services arrangements between Equinox employees that result in referrals is permissible with prior written approval of the Club Manager.

6. Certifications

Employee agrees to maintain an accredited Pilates/Personal Training certification that has been approved by Equinox and current C.P.R certification, such certifications being required for employment as a Fitness Instructor.

7. Public Relations

Employee agrees that so long as this Agreement shall remain in effect, when media exposure is provided to the Employee through Equinox, he/she shall only represent Equinox and shall not represent any other Health and Wellness Facility. Media exposure shall mean any opportunity for television, film or print coverage (including advertising). All media interaction in which the Employee represents Equinox must be approved in advance by the Public Relations Department of Equinox. When representing Equinox in media events, Equinox clothing containing the Equinox logo must be worn. Such clothing will be provided by the Public Relations Department of Equinox.

8. No Compensation Upon Termination

It is expressly understood and agreed that the Employee shall not be entitled to any payments in the event of a termination of this Agreement, other than those payments required under applicable law, unless agreed to in writing between the Employee and the Company.

9. Indemnification, Hold Harmless

Employee agrees to indemnify and hold harmless the Company and all related entities including all Equinox clubs from any liability arising out of his/her own negligence and agrees that in the event the Company pays any amount on behalf of the Employee representing all or a portion of such liability, the Company shall be subrogated to the rights of the employee to the extent of such payment.

10. Legal Fees and Court Costs

In the event of any legal action relating to this Agreement or any breach or alleged breach hereof, including any action relating to Employee's employment and/or separation therefrom, the prevailing party shall be entitled to recover from the non-prevailing party all costs and expenses, including reasonable attorneys' fees incurred by such party in connection with such action.

11. Miscellaneous

(a) This Agreement contains the sole and entire agreement between the parties, and shall supersede any and all other agreements between the parties. Employee agrees that the Company has made no agreements or representations, oral or otherwise, expressed or implied, with respect to the subject matter of this Agreement, which are not set forth expressly in this Agreement.

(b) No provision of this Agreement may be modified, waived, or discharged unless such waiver, modification, or discharge is agreed to in writing signed by the Employee and the Company. No waiver by any party hereto at any time of the breach by any other party hereto of, or compliance with, any condition or provision of this Agreement to be performed by such other party shall be deemed a waiver of similar or dissimilar provisions or conditions at the same or at any prior or subsequent time.

(c) Employee acknowledges that he/she has received the Company Handbook and has reviewed and understands Company policies and procedures.

(d) The relationship between the Company and Employee shall at all times be that of at-will employer and employee and no other relationship shall be implied. The parties shall not under any circumstances be considered to be joint or co-venturers.

(e) This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together will constitute one and the same instrument.

IN WITNESS WHEREOF, the Company has caused this Agreement to be executed by its officer's thereunto duly authorized, and the Employee has signed this Agreement, as of the day and year first written above.

EQUINOX FITNESS CLUB

By: PERSONAL TRAINER
Title:
RONALD JOHNSON
Employee [Print Name]

Ronald Johnson
Signature



**Equinox
Position Description**

Position Information

Position Title: Personal Trainer

Approved By: Human Resources

Position Reports To: Personal Training Manager

Effective Date: January 2003

Department: Personal Training

Date Last Reviewed: August 2005

FLSA Status: Non-Exempt

Titles of Positions Reporting To This Position: None

Purpose of Position

Provide personalized attention, professional instruction and exercise programming to each member as to significantly contribute to the member's health, fitness, and wellness goals while providing the highest level of customer service.

Essential Functions (Responsibilities)

The responsibilities and duties of this position described here are representative of those an employee must perform. This is not a comprehensive list and other duties may be assigned. Reasonable accommodation may be made to enable individuals with disabilities to perform the essential functions.

1. Employees will contribute to and consistently apply Equinox's policies and procedures by effectively working with all Equinox personnel without regard to race, religion, age, national origin, gender, physical or mental disability.
2. Administer Fitness Evaluations, Orientations, Stretching and Personal Training sessions:
 - a. Perform Equifit Assessment outlining results with respect to members' current exercise condition.
 - b. Determine members' personal fitness goals.
 - c. Outline, provide personal instruction and record programs specific to the members' needs and capabilities.
 - d. Follow up and ensure additional Complementary Services are scheduled and utilized.
 - e. Knowledge and understanding of when medical clearance is required.
 - f. Execution of PT sessions based on schematic program design and effective and accurate execution of the '3 Cycle System'.
3. Establish and maintain a personal training client base according to company standards:

- a. Provide Complementary Services to members.
 - b. Communicate training methods effectively.
 - c. Design fitness program to meet the members' personal goals.
 - d. Update, record, and review members' exercise programs and progress on continual basis.
 - e. Motivate members to continue their exercise program.
 - f. Maintain personal training client appointment book.
 - g. Maintain accurate daily client lists.
 - h. Monitor session utilization of clients.
 - i. Enlist the knowledge, expertise and guidance of the Personal Training Manager and Fitness Manager.
4. Monitor and instruct members on the safe and effective usage of cardiovascular, strength training, balance, and flexibility equipment:
- a. Inform members of proper form and function of each apparatus.
 - b. Inform member, by direction or demonstration, the proper setup on equipment – seat adjustment, weight adjustment, body alignment, programs, program levels, etc.
 - c. Inform member of the benefits and risks of all equipment.
 - d. Recommend safe exercise guidelines in accordance with EFTI and national certification organization.
 - e. Consistent circulation throughout the exercise floors.

Other Responsibilities & Duties

1. Understand technical and practical usage of all fitness equipment:
 - a. Powering on/off equipment.
 - b. Purpose/function of equipment.
 - c. Muscle groups involved.
 - d. Practical alternatives for individuals.
2. Ensure a safe environment at all times:
 - a. Routinely inspect cardiovascular and strength training equipment.
 - b. Report all damaged or malfunctioning equipment.
 - c. Return all equipment not in use to its proper place.
 - d. Recommend the use of safety collars on Olympic bars.
 - e. Walkways free of tripping or slipping hazards.
3. Monitor and instruct members on the safe and effective usage of cardiovascular, strength training, balance, and flexibility equipment:
 - f. Inform members of proper form and function of each apparatus.
 - g. Inform member, by direction or demonstration, the proper setup on equipment – seat adjustment, weight adjustment, body alignment, programs, program levels, etc.
 - h. Inform member of the benefits and risks of all equipment.
 - i. Recommend safe exercise guidelines in accordance with E.F.T.I. and national certification organization.
 - j. Consistent circulation throughout the exercise floors.
4. Enrollment in Equinox Fitness Training Programs and Continuing Education Programs and passing all administered exams and evaluations:

- a. Elite Level.
 - b. Comprehensive.
 - c. Elite Plus.
 - d. Continuing Education (internal & external programs).
 - e. Weekly instruction with Fitness Manager/Mentors.
5. Attend all scheduled meetings:
 - a. Personal Trainer Forums.
 - b. ½ Hour Monthly Business Meetings
6. Administer Fitness Evaluations, Orientations, Stretching and Personal Training sessions:
 - g. Perform Equifit Assessment outlining results with respect to members' current exercise condition.
 - h. Determine members' personal fitness goals.
 - i. Outline, provide personal instruction and record programs specific to the members' needs and capabilities.
 - j. Follow up and ensure additional Complementary Services are scheduled and utilized.
 - k. Knowledge and understanding of when medical clearance is required.
 - l. Execution of PT sessions based on schematic program design and effective and accurate execution of the '3 Cycle System'.
7. Provide a high level of personalized attention to members:
 - a. Greet members and guests with a smile, verbal greeting and by name if known.
 - b. Consistently energetic, enthusiastic, and motivating.
 - c. Consistently provide exercise guidance and assistance to members.
 - d. Provide workout towels to members.
 - e. Change TV channels for members.
 - f. Ensure exercise equipment and floors are clean of debris, sweat, or hazards.
 - g. Spotting members on the exercise floor.
8. Establish and maintain a personal training client base according to company standards:
 - j. Provide Complementary Services to members.
 - k. Communicate training methods effectively.
 - l. Design fitness program to meet the members' personal goals.
 - m. Update, record, and review members' exercise programs and progress on continual basis.
 - n. Motivate members to continue their exercise program.
 - o. Maintain personal training client appointment book.
 - p. Maintain accurate daily client lists.
 - q. Monitor session utilization of clients.
 - r. Enlist the knowledge, expertise and guidance of the Personal Training Manager and Fitness Manager.
9. Knowledge and participation in all club services, programs, and products:
 - a. Personal Training.
 - b. Spa/Wellness Services.
 - c. Nutrition Program.
 - d. Group Fitness Classes.
 - e. Special Events.
 - f. Equinox Skin Care and Vitamin Line.

10. Adhere and implement all Equinox policies and procedures:
 - a. Proper dress code.
 - b. Nametag worn at all times.
 - c. Blackout workout hours observed.
 - d. Shift coverage procedures.
 - e. Expense reports.
11. Mentoring new Personal Trainers and participation in E.F.T.I. (senior personal trainers):
 - a. Teaching and reviewing Elite core curriculum.
 - b. Teaching effective and efficient time management regarding scheduling clients.
 - c. Ongoing role-playing.
 - d. Review strengths and weaknesses and the development of an action plan.
 - e. Shadowing new Personal Trainers.
12. Perform all other projects and responsibilities as required.

Position Requirements & Qualifications

To perform this job successfully, an individual should meet the following minimum requirements and qualifications.

1. Current C.P.R. Certification and one national personal training certification.
2. Excellent verbal and written communication skills.
3. Ability to utilize new techniques and ideas.
4. Possess honesty and personal integrity.
5. Enthusiastic, energetic, personable and friendly.
6. Passionate, intelligent and knowledge regarding the fitness industry.
7. Ambitious and driven.
8. Excellent time management, organizational, and follow-up skills.

Exhibit B



This Employment Agreement (the "Agreement") is made as of the 9
day of February, 2005 by and between Equinox Fitness Club, a New
York Corporation (the "Company"), and

SETH GOLDSTEIN
(The "Employee").

WITNESSETH:

WHEREAS, the Employee is being employed by the Company as a
Personal Trainer and/or Floor Staff member; and

WHEREAS, the Company operates health and fitness clubs known as
the Equinox Fitness clubs (hereinafter "Equinox"), and is obtaining the
services of the Employee as a Personal Trainer and/or Floor Trainer at one
or more of the Equinox clubs upon the terms and conditions set forth in this
Agreement;

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

1. Employment at Will; Duties; Probation Period

(a) The Company agrees to employ Employee as an employee at will. Employee acknowledges that he/she is an employee at will and that the Company for any reason without cause may terminate him/her. The purpose of this Agreement is the set forth certain duties and understandings applicable while the Agreement shall remain in effect. This Agreement shall continue from month to month unless terminated by either party. This Agreement shall not be construed to create any relationship other than an employment at will.

(b) The Employee agrees to serve as a Personal Trainer and/or Floor Staff member. In the case of a Personal Trainer/Floor Trainer, the Employee agrees to use his/her best efforts to perform in diligent fashion the duties and responsibilities of a Personal Trainer/Floor Trainer, as set forth in the Equinox Job Description for Personal Trainers (the "Job Description"), which is incorporated into this Agreement and made a part hereof. The Employee hereby acknowledges that he/she has been provided with a copy of the Job Description, has read and understands the Job Description and understands that the Job Description sets forth his/her responsibilities and duties.

(c) There shall be a probation period of 90 days commencing from the date of this Agreement, during which the Employer shall evaluate the Employee's performance.

2. Attention to Business: Duties

(a) While this Agreement shall remain in effect, the Employee agrees to devote such amounts of his time, skill, and efforts to the performance of his/her duties and responsibilities to the Company, and to any related entity of the Company, as may reasonably be necessary, under the supervision and direction of the Company.

(b) The Employee shall be available for reasonable travel on Company business. The Employee shall attend media events, promotions and other similar events and shall participate in advertising and promotional programs on an as requested basis and in the manner specified by the Company.

3. Compensation

For all services to be rendered by the Employee in any capacity hereunder, the Company agrees to compensate the Employee as follows:

(a) The current rate per hour while engaged in a Floor Staff assignment.

(b) The Hourly Session Rate in effect at the specific club location where personal training services are performed while engaged in personal training.

4. Competition with the Company

(a) The Employee agrees that he/she shall not train, advise or provide instruction to any Equinox member at any facility that is not an Equinox club (including private residences and other health club or fitness facilities) unless and until prior approval is obtained from the Club Manager at the location where he/she is employed, and payment of the applicable fee (as determined by the Company) is first made to the Company.

(b) The Employee further agrees that he/she shall not train, advise or provide instruction at or for any health club or fitness facility located within a ten (10)-block radius of any Equinox Club. Except insofar as it would prevent or hinder the Employee from performing his/her duties under this Agreement, the Employee shall not be prevented from training non-Equinox members at or providing non-training services to other health clubs or fitness facilities provided such facilities are located outside a ten (10) block radius from any Equinox club, and provided approval is first obtained from the Club Manager at the Equinox club or clubs where the Employee is located.

(c) The Employee agrees that he/she shall not advertise his/her name as being affiliated with any health club or fitness facility located within a ten (10) block radius of any Equinox Club.

(d) The Employee agrees not to distribute to any Equinox member any personal business cards or advertising, or any advertising or promotional material for any entity other than Equinox.

(e) The Employee agrees that he/she will not disparage Equinox, its employees or operations, and will not encourage, induce or attempt to induce any person who is then an employee, consultant or member of

Equinox to terminate his or her employment, consultant relationship or membership with Equinox.

Subject to paragraphs 4 (a)-(e), and, insofar as such employment does not interfere with Employee's duties and responsibilities under this Agreement, Employee shall be permitted to engage in outside employment. Any breach of this provision shall be grounds for immediate termination without notice. The Employee hereby agrees that any breach or threatened breach of any provision of this Section 4 shall result in irreparable harm to the Company for which the Company will have no adequate remedy at law, and shall entitle the Company to, in addition to any other remedies, injunctive relief.

5. Disclosure of Information

(a) The Employee agrees that, except as may be required by law or legal process, he/she will not disclose any confidential information of Equinox, including, but not limited to, information relating to Equinox's members, prospects, employees, independent contractors and suppliers as well as business plans, policies, operating procedures, financial information, inventions, processes and trade secrets of the Equinox.

(b) The Employee agrees that, upon leaving the Company's employ, he/she will not take with him or her, or disclose, except as may be required by law, without the prior written consent of an officer authorized to act in the matter by the Company, any confidential information of the Company. All equipment, records, files, memoranda, computer printouts and data, reports, correspondence and the like, relating to the business of Equinox, shall remain the sole property of Equinox. Any such material in Employees possession at the time of termination or departure shall be returned promptly to Equinox.

The Employee hereby agrees that any breach or threatened breach of any provision of this Section 5 shall result in irreparable harm to the Company for which the Company will have no adequate remedy at law, and shall entitle the Company to, in addition to any other remedies, injunctive relief. The provisions of this Section 5 shall survive any termination of this Agreement.

6. Payment For Services By Members

Employee is required to charge every client that is trained at Equinox through the Equinox Personal Training Program in accordance with the rates then applicable to personal training at the particular club where training is performed. The Employee may not vary the terms or method of payment from that approved by the Company without the prior written consent of the Club Manager. All payment for services will be made as follows:

(a) Payment for personal training services at any Equinox club will be made directly to Equinox and not to the Employee. Equinox will pay Employee for personal training services in accordance with this Agreement;

(b) Employees are prohibited from receiving any direct payments from Equinox members;

(c) Barter arrangements with Equinox members are prohibited;

(d) Exchange of services arrangements between Employees that result in referrals is permissible with prior written approval of the Club Manager.

7. Certifications

Employee agrees to maintain a current training certification and a current C.P.R. certification, such certifications being required for employment as a Personal Trainer.

8. Continuing Education

Employee agrees to meet all Equinox Fitness Training Institutes (EFTI) requirements including testing, course work and mandatory meetings with Equinox Fitness Management.

9. Public Relations

Employee agrees that so long as this Agreement shall remain in effect, when media exposure is provided to the Employee through Equinox, he/she shall only represent Equinox and shall not represent any other health club or fitness facility. Media exposure shall mean any opportunity for television, film or print coverage (including advertising). All media interaction in which the Employee represents Equinox must be approved in advance by the Public Relations Department of Equinox. When representing Equinox in media events, Equinox clothing containing the Equinox logo must be worn. Such clothing will be provided by the Public Relations Department of Equinox.

10. No Compensation Upon Termination

It is expressly understood and agreed that the Employee shall not be entitled to any amount of severance or bonus in the event of a termination or expiration of this Agreement unless agreed to in writing between the Employee and the Company.

11. Identification, Hold Harmless

Employee agrees to indemnify and hold harmless the Company and all related entities including all Equinox clubs from any liability arising out of his/her own negligence and agrees that in the event the Company pays any amount on behalf of the Employee representing all or a portion of liability, the Company shall be subrogated to the rights of the employee to the extent of such payment.

12. Legal Fees and Court Costs

In the event of any legal action relating to this Agreement or any breach or alleged breach hereof, the prevailing party shall be entitled to recover from the non-prevailing party all costs and expenses, including reasonable attorney's fees incurred by such party in connection herewith.

13. Miscellaneous

(a) This Agreement contains the sole and entire agreement between the parties, and shall supersede any and all other agreements between the

parties. Any party hereof has made no agreements or representation, oral or otherwise, expressed or implied, with respect to the subject matter, which are not set forth expressly in this Agreement.

(b) No provision of this Agreement may be modified, waived, or discharged unless such waiver, modification, or discharge is agreed to in writing signed by the Employee and the Company. No waiver by any party hereto at any time of the breach by any other party hereto of, or compliance with, any condition or provision of this Agreement to be performed by such other party shall be deemed a waiver of similar or dissimilar provisions or conditions at the same or at any prior or subsequent time.

(c) The relationship between the Company and Employee shall at all times be that of employer and employee and no other relationship shall be implied. The parties shall not under any circumstances be considered to be joint or co-ventures.

(d) This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together will constitute one and the same instrument.

IN WITNESS WHEREOF, the Company has caused this Agreement to be executed by its officer's thereunto duly authorized, and the Employee has signed this Agreement, as of the day and year first written above.

The Company

By:

Title:

A handwritten signature in cursive script, appearing to read "Seth Goldstein", is written over a horizontal line.

Employee



**Equinox
Position Description**

Position Information

Position Title: Personal Trainer

Approved By: Human Resources

Position Reports To: Personal Training Manager

Effective Date: January 2003

Department: Personal Training

Date Last Reviewed: August 2005

FLSA Status: Non-Exempt

Titles of Positions Reporting To This Position: None

Purpose of Position

Provide personalized attention, professional instruction and exercise programming to each member as to significantly contribute to the member's health, fitness, and wellness goals while providing the highest level of customer service.

Essential Functions (Responsibilities)

The responsibilities and duties of this position described here are representative of those an employee must perform. This is not a comprehensive list and other duties may be assigned. Reasonable accommodation may be made to enable individuals with disabilities to perform the essential functions.

1. Employees will contribute to and consistently apply Equinox's policies and procedures by effectively working with all Equinox personnel without regard to race, religion, age, national origin, gender, physical or mental disability.
2. Administer Fitness Evaluations, Orientations, Stretching and Personal Training sessions:
 - a. Perform Equifit Assessment outlining results with respect to members' current exercise condition.
 - b. Determine members' personal fitness goals.
 - c. Outline, provide personal instruction and record programs specific to the members' needs and capabilities.
 - d. Follow up and ensure additional Complementary Services are scheduled and utilized.
 - e. Knowledge and understanding of when medical clearance is required.
 - f. Execution of PT sessions based on schematic program design and effective and accurate execution of the '3 Cycle System'.
3. Establish and maintain a personal training client base according to company standards:

- a. Provide Complementary Services to members.
 - b. Communicate training methods effectively.
 - c. Design fitness program to meet the members' personal goals.
 - d. Update, record, and review members' exercise programs and progress on continual basis.
 - e. Motivate members to continue their exercise program.
 - f. Maintain personal training client appointment book.
 - g. Maintain accurate daily client lists.
 - h. Monitor session utilization of clients.
 - i. Enlist the knowledge, expertise and guidance of the Personal Training Manager and Fitness Manager.
4. Monitor and instruct members on the safe and effective usage of cardiovascular, strength training, balance, and flexibility equipment:
- a. Inform members of proper form and function of each apparatus.
 - b. Inform member, by direction or demonstration, the proper setup on equipment – seat adjustment, weight adjustment, body alignment, programs, program levels, etc.
 - c. Inform member of the benefits and risks of all equipment.
 - d. Recommend safe exercise guidelines in accordance with EFTI and national certification organization.
 - e. Consistent circulation throughout the exercise floors.

Other Responsibilities & Duties

1. Understand technical and practical usage of all fitness equipment:
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 - b. Purpose/function of equipment.
 - c. Muscle groups involved.
 - d. Practical alternatives for individuals.
2. Ensure a safe environment at all times:
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 - g. Inform member, by direction or demonstration, the proper setup on equipment – seat adjustment, weight adjustment, body alignment, programs, program levels, etc.
 - h. Inform member of the benefits and risks of all equipment.
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 - j. Consistent circulation throughout the exercise floors.
4. Enrollment in Equinox Fitness Training Programs and Continuing Education Programs and passing all administered exams and evaluations:

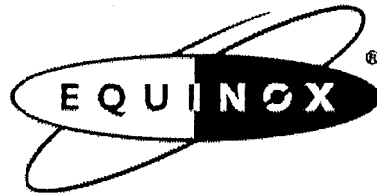
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 - a. Greet members and guests with a smile, verbal greeting and by name if known.
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 - c. Consistently provide exercise guidance and assistance to members.
 - d. Provide workout towels to members.
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 - g. Spotting members on the exercise floor.
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 - j. Provide Complementary Services to members.
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 - l. Design fitness program to meet the members' personal goals.
 - m. Update, record, and review members' exercise programs and progress on continual basis.
 - n. Motivate members to continue their exercise program.
 - o. Maintain personal training client appointment book.
 - p. Maintain accurate daily client lists.
 - q. Monitor session utilization of clients.
 - r. Enlist the knowledge, expertise and guidance of the Personal Training Manager and Fitness Manager.
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 - b. Nametag worn at all times.
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 - d. Shift coverage procedures.
 - e. Expense reports.
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 - a. Teaching and reviewing Elite core curriculum.
 - b. Teaching effective and efficient time management regarding scheduling clients.
 - c. Ongoing role-playing.
 - d. Review strengths and weaknesses and the development of an action plan.
 - e. Shadowing new Personal Trainers.
12. Perform all other projects and responsibilities as required.

Position Requirements & Qualifications

To perform this job successfully, an individual should meet the following minimum requirements and qualifications.

1. Current C.P.R. Certification and one national personal training certification.
2. Excellent verbal and written communication skills.
3. Ability to utilize new techniques and ideas.
4. Possess honesty and personal integrity.
5. Enthusiastic, energetic, personable and friendly.
6. Passionate, intelligent and knowledge regarding the fitness industry.
7. Ambitious and driven.
8. Excellent time management, organizational, and follow-up skills.



This Employment Agreement (the "Agreement") is made as of the 3 day of April, 06 by and between Equinox Fitness Club, a New York Corporation (the "Company"), and

SETH GOLDSTEIN

(The "Employee").

WITNESSETH:

WHEREAS, the Employee is being employed by the Company as a Personal Trainer and/or Floor Staff member; and

WHEREAS, the Company operates health and fitness clubs known as the Equinox Fitness clubs (hereinafter "Equinox"), and is obtaining the services of the Employee as a Personal Trainer and/or Floor Trainer at one or more of the Equinox clubs upon the terms and conditions set forth in this Agreement;

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

1. Employment at Will; Duties; Probation Period

(a) The Company agrees to employ Employee as an employee at will. Employee acknowledges that he/she is an employee at will and that the Company for any reason without cause may terminate him/her. The purpose of this Agreement is the set forth certain duties and understandings applicable while the Agreement shall remain in effect. This Agreement shall continue from month to month unless terminated by either party. This Agreement shall not be construed to create any relationship other than an employment at will.

(b) The Employee agrees to serve as a Personal Trainer and/or Floor Staff member. In the case of a Personal Trainer/Floor Trainer, the Employee agrees to use his/her best efforts to perform in diligent fashion the duties and responsibilities of a Personal Trainer/Floor Trainer, as set forth in the Equinox Job Description for Personal Trainers (the "Job Description"), which is incorporated into this Agreement and made a part hereof. The Employee hereby acknowledges that he/she has been provided with a copy of the Job Description, has read and understands the Job Description and understands that the Job Description sets forth his/her responsibilities and duties.

(c) There shall be a probation period of 90 days commencing from the date of this Agreement, during which the Employer shall evaluate the Employee's performance.

2. Attention to Business: Duties

(a) While this Agreement shall remain in effect, the Employee agrees to devote such amounts of his time, skill, and efforts to the performance of his/her duties and responsibilities to the Company, and to any related entity of the Company, as may reasonably be necessary, under the supervision and direction of the Company.

(b) The Employee shall be available for reasonable travel on Company business. The Employee shall attend media events, promotions and other similar events and shall participate in advertising and promotional programs on an as requested basis and in the manner specified by the Company.

3. Compensation

For all services to be rendered by the Employee in any capacity hereunder, the Company agrees to compensate the Employee as follows:

(a) The current rate per hour while engaged in a Floor Staff assignment.

(b) The Hourly Session Rate in effect at the specific club location where personal training services are performed while engaged in personal training.

4. Competition with the Company

(a) The Employee agrees that he/she shall not train, advise or provide instruction to any Equinox member at any facility that is not an Equinox club (including private residences and other health club or fitness facilities) unless and until prior approval is obtained from the Club Manager at the location where he/she is employed, and payment of the applicable fee (as determined by the Company) is first made to the Company.

(b) The Employee further agrees that he/she shall not train, advise or provide instruction at or for any health club or fitness facility located within a ten (10)-block radius of any Equinox Club. Except insofar as it would prevent or hinder the Employee from performing his/her duties under this Agreement, the Employee shall not be prevented from training non-Equinox members at or providing non-training services to other health clubs or fitness facilities provided such facilities are located outside a ten (10) block radius from any Equinox club, and provided approval is first obtained from the Club Manager at the Equinox club or clubs where the Employee is located.

(c) The Employee agrees that he/she shall not advertise his/her name as being affiliated with any health club or fitness facility located within a ten (10) block radius of any Equinox Club.

(d) The Employee agrees not to distribute to any Equinox member any personal business cards or advertising, or any advertising or promotional material for any entity other than Equinox.

(e) The Employee agrees that he/she will not disparage Equinox, its employees or operations, and will not encourage, induce or attempt to induce any person who is then an employee, consultant or member of

Equinox to terminate his or her employment, consultant relationship or membership with Equinox.

Subject to paragraphs 4 (a)-(e), and, insofar as such employment does not interfere with Employee's duties and responsibilities under this Agreement, Employee shall be permitted to engage in outside employment. Any breach of this provision shall be grounds for immediate termination without notice. The Employee hereby agrees that any breach or threatened breach of any provision of this Section 4 shall result in irreparable harm to the Company for which the Company will have no adequate remedy at law, and shall entitle the Company to, in addition to any other remedies, injunctive relief.

5. Disclosure of Information

(a) The Employee agrees that, except as may be required by law or legal process, he/she will not disclose any confidential information of Equinox, including, but not limited to, information relating to Equinox's members, prospects, employees, independent contractors and suppliers as well as business plans, policies, operating procedures, financial information, inventions, processes and trade secrets of the Equinox.

(b) The Employee agrees that, upon leaving the Company's employ, he/she will not take with him or her, or disclose, except as may be required by law, without the prior written consent of an officer authorized to act in the matter by the Company, any confidential information of the Company. All equipment, records, files, memoranda, computer printouts and data, reports, correspondence and the like, relating to the business of Equinox, shall remain the sole property of Equinox. Any such material in Employees possession at the time of termination or departure shall be returned promptly to Equinox.

The Employee hereby agrees that any breach or threatened breach of any provision of this Section 5 shall result in irreparable harm to the Company for which the Company will have no adequate remedy at law, and shall entitle the Company to, in addition to any other remedies, injunctive relief. The provisions of this Section 5 shall survive any termination of this Agreement.

6. Payment For Services By Members

Employee is required to charge every client that is trained at Equinox through the Equinox Personal Training Program in accordance with the rates then applicable to personal training at the particular club where training is performed. The Employee may not vary the terms or method of payment from that approved by the Company without the prior written consent of the Club Manager. All payment for services will be made as follows:

(a) Payment for personal training services at any Equinox club will be made directly to Equinox and not to the Employee. Equinox will pay Employee for personal training services in accordance with this Agreement;

(b) Employees are prohibited from receiving any direct payments from Equinox members;

(c) Barter arrangements with Equinox members are prohibited;

(d) Exchange of services arrangements between Employees that result in referrals is permissible with prior written approval of the Club Manager.

7. Certifications

Employee agrees to maintain a current training certification and a current C.P.R. certification, such certifications being required for employment as a Personal Trainer.

8. Continuing Education

Employee agrees to meet all Equinox Fitness Training Institutes (EFTI) requirements including testing, course work and mandatory meetings with Equinox Fitness Management.

9. Public Relations

Employee agrees that so long as this Agreement shall remain in effect, when media exposure is provided to the Employee through Equinox, he/she shall only represent Equinox and shall not represent any other health club or fitness facility. Media exposure shall mean any opportunity for television, film or print coverage (including advertising). All media interaction in which the Employee represents Equinox must be approved in advance by the Public Relations Department of Equinox. When representing Equinox in media events, Equinox clothing containing the Equinox logo must be worn. Such clothing will be provided by the Public Relations Department of Equinox.

10. No Compensation Upon Termination

It is expressly understood and agreed that the Employee shall not be entitled to any amount of severance or bonus in the event of a termination or expiration of this Agreement unless agreed to in writing between the Employee and the Company.

11. Identification, Hold Harmless

Employee agrees to indemnify and hold harmless the Company and all related entities including all Equinox clubs from any liability arising out of his/her own negligence and agrees that in the event the Company pays any amount on behalf of the Employee representing all or a portion of liability, the Company shall be subrogated to the rights of the employee to the extent of such payment.

12. Legal Fees and Court Costs

In the event of any legal action relating to this Agreement or any breach or alleged breach hereof, the prevailing party shall be entitled to recover from the non-prevailing party all costs and expenses, including reasonable attorney's fees incurred by such party in connection herewith.

13. Miscellaneous

(a) This Agreement contains the sole and entire agreement between the parties, and shall supersede any and all other agreements between the

parties. Any party hereof has made no agreements or representation, oral or otherwise, expressed or implied, with respect to the subject matter, which are not set forth expressly in this Agreement.

(b) No provision of this Agreement may be modified, waived, or discharged unless such waiver, modification, or discharge is agreed to in writing signed by the Employee and the Company. No waiver by any party hereto at any time of the breach by any other party hereto of, or compliance with, any condition or provision of this Agreement to be performed by such other party shall be deemed a waiver of similar or dissimilar provisions or conditions at the same or at any prior or subsequent time.

(c) The relationship between the Company and Employee shall at all times be that of employer and employee and no other relationship shall be implied. The parties shall not under any circumstances be considered to be joint or co-ventures.

(d) This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together will constitute one and the same instrument.

IN WITNESS WHEREOF, the Company has caused this Agreement to be executed by its officer's thereunto duly authorized, and the Employee has signed this Agreement, as of the day and year first written above.

The Company

By: _____

Title: _____

A handwritten signature in black ink, appearing to read "Scott Goldstein", written over a horizontal line.

Employee



**Equinox
Position Description**

Position Information

Position Title: Personal Trainer

Approved By: Human Resources

Position Reports To: Personal Training Manager

Effective Date: January 2003

Department: Personal Training

Date Last Reviewed: August 2005

FLSA Status: Non-Exempt

Titles of Positions Reporting To This Position: None

Purpose of Position

Provide personalized attention, professional instruction and exercise programming to each member as to significantly contribute to the member's health, fitness, and wellness goals while providing the highest level of customer service.

Essential Functions (Responsibilities)

The responsibilities and duties of this position described here are representative of those an employee must perform. This is not a comprehensive list and other duties may be assigned. Reasonable accommodation may be made to enable individuals with disabilities to perform the essential functions.

1. Employees will contribute to and consistently apply Equinox's policies and procedures by effectively working with all Equinox personnel without regard to race, religion, age, national origin, gender, physical or mental disability.
2. Administer Fitness Evaluations, Orientations, Stretching and Personal Training sessions:
 - a. Perform Equifit Assessment outlining results with respect to members' current exercise condition.
 - b. Determine members' personal fitness goals.
 - c. Outline, provide personal instruction and record programs specific to the members' needs and capabilities.
 - d. Follow up and ensure additional Complementary Services are scheduled and utilized.
 - e. Knowledge and understanding of when medical clearance is required.
 - f. Execution of PT sessions based on schematic program design and effective and accurate execution of the '3 Cycle System'.
3. Establish and maintain a personal training client base according to company standards:

- a. Provide Complementary Services to members.
 - b. Communicate training methods effectively.
 - c. Design fitness program to meet the members' personal goals.
 - d. Update, record, and review members' exercise programs and progress on continual basis.
 - e. Motivate members to continue their exercise program.
 - f. Maintain personal training client appointment book.
 - g. Maintain accurate daily client lists.
 - h. Monitor session utilization of clients.
 - i. Enlist the knowledge, expertise and guidance of the Personal Training Manager and Fitness Manager.
4. Monitor and instruct members on the safe and effective usage of cardiovascular, strength training, balance, and flexibility equipment:
- a. Inform members of proper form and function of each apparatus.
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